

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DONNA CURLING, et al.,	*	
	*	CIVIL ACTION NO.
Plaintiffs,	*	1:17-CV-2989-AT
	*	
v.	*	
	*	
BRAD RAFFENSPERGER, et al.,	*	
	*	
Defendants	*	
	*	

**OBJECTION OF NON-PARTY JOSEPH KIRK, BARTOW COUNTY  
ELECTIONS SUPERVISOR, TO SUBPOENA TO PRODUCE  
DOCUMENTS FROM COALITION FOR GOOD GOVERNANCE**

COMES NOW JOSEPH KIRK, in his official capacity as the Bartow  
County, Georgia Elections Supervisor, by and through the undersigned counsel,  
and makes this his objection to Plaintiff COALITION FOR GOOD  
GOVERNANCE's Subpoena to Produce Documents, Information, or Objects or to  
Permit Inspection of Premises in a Civil Action by showing and stating as follows:

1.

On June 13, 2019, Non-party JOSEPH KIRK (hereinafter "KIRK") was  
served with a Subpoena to Produce Documents, Information, or Objects or to  
Permit Inspection of Premises in a Civil Action in the above-styled case, a copy of

which is attached hereto as Exhibit A. The subpoena enumerates 18 categories of documents to be produced.

2.

Non-party KIRK intends to comply with the requests set forth in the subpoena except as otherwise noted hereafter.

3.

Non-party KIRK objects to items 1, 2, and 3 of the subpoena which seek production of the following:

1. Electronic copy of the GEMS Databases for the November 6, 2018 election received from the Secretary prior to such election. Include any passwords necessary to access the databases.
2. Electronic copy of the completed GEMS Databases transmitted to the Secretary at the close of the November 6, 2018 election. Include any passwords necessary to access the databases. (If no database was transmitted to Secretary of State, provide final post-certification GEMS database.)
3. Electronic copy of the GEMS Database backup created closest in time to 11:59 p.m. November 6, 2018.

The authority for this objection is O.C.G.A. § 21-2-379.24(g) which states:

Documents or information that, if made public, would endanger the security of any voting system used or being considered for use in this state, or any component thereof, including, but not limited to, electronic ballot markers, DREs, ballot scanners, pollbooks, and software or databases used for voter registration, shall not be open for public inspection except upon order of a court of competent jurisdiction.

See also O.C.G.A. § 21-2-500(a) (stating that such election records held by the superior court clerk are to be held under seal for 24 months).

4.

As to item 4, “Polling place DRE Recap sheets from all voting locations for Election Day,” Non-party KIRK objects thereto to the extent such production seeks the “After Polls Close SEAL NUMBER” pursuant to O.C.G.A. § 21-2-379.24(g). Such seal numbers have been redacted from the production, but the remaining responsive items will be produced.

5.

As to item 5 which seeks an “[e]lectronic copy,” Non-party KIRK does not keep an electronic copy. A paper copy will be produced.

6.

As to item 6, “Electronic copy of the audit lot (system logs) for GEMS server from the date the November 6, 2018 election was initiated through December 31, 2018,” Non-party KIRK objects thereto pursuant to O.C.G.A. § 21-2-379.24(g).

7.

As to items 8, 10, and 13, Non-party KIRK is not in possession of any responsive documents.

8.

As to item 14.d, it is unclear to Non-party KIRK what communications Plaintiff is seeking concerning “Ballot images as public records.”

9.

As to items 16 and 17, seeking votes records of certain ballots cast, Non-party KIRK submits that he is technologically unable to determine which ballots were first or last cast. Additionally, Non-party KIRK objects to these two items as disclosure of such images would violate the mandate of the Georgia Constitution which requires that votes be cast by secret ballot. 1983 Ga. Const. Art. II, Sec. I, Para. I.

10.

As to item 18, “Documentation related to the application of unique identifiers on electronic ballots,” Non-party KIRK has no responsive documents.

Respectfully submitted, this 26th day of June 2019.

Respectfully submitted,

**J. Jayson Phillips**

Georgia Bar No. 576305

Attorney for Non-party Joseph Kirk

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